IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 600 of 1989

with

SPECIAL CIVIL APPLICATION No 477 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASAVA RANJITBHAI N. AND OTHERS

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT PATEL for Petitioners No. 1-2

MR U.R. BHATT, A.G.P. for Respondent No. 1

MR UNWALLA for Respondent No. 2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 12/10/2001

COMMON ORAL JUDGEMENT

The petitioners, in both these petitions are persons, admittedly, belonging to scheduled tribes and as the relief sought in both these petitions is identical in

nature, both these petitions were heard together and are being disposed of by this common judgment.

2. The petitioners have prayed that Respondent No.2, namely, District Panchayat, Mahesana be directed to appoint the petitioners and other scheduled tribes candidates selected, from the list of scheduled tribes candidates, against 80 posts reserved for them.

3. Mr.Jayant Patel, learned Advocate appeared for the petitioners in both the petitions. Mr.U.R.Bhatt, learned DA.G.P. appeared for the State of Gujarat, i.e. Respondent No.1, in both the petitions and Mr.Unwalla appeared for the District Panchayat, Mahesana, i.e. Respondent No.2.

4. In Spl.C.A. No.600 of 1989, there are two petitioners while in Spl.C.A. No.477 of 1992, there are 19 petitioners. It is the say of the petitioners that on 20th March, 1983 an advertisement appeared in 'Gujarat Rojgar Samachar' inviting applications from the eligible persons for the posts of Talati-cum-Mantri for three districts, namely, Kachchh, Panchmahals and Mahesana. As per the advertisement, there were 150 posts available for Mahesana District, out of which, 80 seats were reserved for the candidates belonging to scheduled tribes. The petitioners applied and were called for written test, and thereafter, for oral interview. Admittedly, on the basis of their performance, the petitioners were selected and found their names appearing in the select list, prepared of the successful candidates. This select list was prepared sometime in December, 1983 / January, 1984. In the select list prepared, there were more than 400 candidates as against 150 vacancies over all. Out of this, against 80 posts for scheduled tribes candidates, 78 candidates were declared as successful candidates and their names mentioned in the select list.

5. The petitioners' main grievance is that, in February, 1984, Respondent No.2 appointed 33 persons, wherein only 3 tribal candidates were appointed. Thereafter, in the year 1984 and 1987, Respondent No.2 issued two more orders, whereby 69 candidates were appointed. In December, 1988, another batch of 44 candidates were appointed. Thereafter, between 1988 to 1990, 32 more persons were appointed. That, out of the appointment of more than 170 persons, only 8 candidates belonging to scheduled tribes were appointed while the remaining candidates belonging to general category were appointed and the petitioners seek direction to Respondent No.2 to absorb the balance of 70 candidates

from scheduled tribes category falling within the select list.

6. Mr.Patel submitted that the select list must be operated qua the posts advertised till all the vacancies falling within the particular category are exhausted. The only rider, according to him, was that the authority would be justified in not filling the posts for administrative or financial reasons but, as and when the posts are required to be filled up, preference must be given to the candidates already entered in the select list. It was submitted that if this course of action was not adopted, the entire action would be liable to be struck down as being arbitrary and illegal. According to him, even in the year 1992, 57 vacancies were yet existing out of 80 posts advertised as falling within the scheduled tribes category and as the petitioners were in all 23, the petitioners should be appointed against those vacant seats by Respondent No.2. Mr.Patel supports his contention by referring and relying upon the judgment in the case of Rathod Jahabhai Dangarbhai & Ors. V/s. State of Gujarat and Ors., 1995(1) GLR 427.

7. Mr.Unwalla appearing for Respondent No.2 raised a preliminary contention that the petition should be rejected on the ground of delay and latches. In support of his submission, he relied on the decision of this Court (Coram : S.K.Keshote, J) dated 1st December, 2000 in Spl.C.A. No.8494 of 1990 in the case of Mahesana Talati-Yadi Bharti-Anyaya Nivaran Samiti V/s. State of Gujarat. Mr.Unwalla also submitted that as laid down by this Court in the case of Rathod Jahabhai Dangarbhai & Ors. V/s State of Gujarat (supra), the settled legal position is that, a candidate whose name is included in the select list does not acquire any indefeasible right to be appointed. Referring to the facts as are available on record, it was submitted that though the orders of appointment were issued from time to time, commencing from February, 1984 to 1990, the petitioners had approached this Court only in 1989 and in 1992. It was submitted that no cause has been made out, much less pleaded for the delay in seeking relief. Mr.U.R.Bhatt, the learned A.G.P. supported Mr.Unwalla and submitted that in any view of the matter, against total number of 150 posts for which advertisement had been given, more than 170 persons have already been appointed, and at this length of time equity would operate in favour of those already appointed, and hence, the Court should not interfere, especially, in view of the fact that the affected persons are not joined as parties in the present petitions. It was further submitted that the Court may

also take into consideration the fact that no interim relief was granted in favour of the petitioners and thus, the petitioners are not entitled to any relief.

8. The petitions require to be rejected firstly on the ground of delay and latches. At the time of hearing a pointed query was put to Mr.Jayant Patel regarding the say of the petitioners as to delay and latches. His reply was that, there was a ban by virtue of Government Circular as to further recruitment, and hence, till the circular was lifted in 1990, the petitioners were not affected. It is pertinent to note that the circular was dated 12th June, 1989 and by that time already 146 posts out of 150 were filled up. Therefore, no sufficient or reasonable explanation is forthcoming, and hence, the petitions are liable to be dismissed on the ground of delay and latches alone.

9. However, having heard the parties at length and taking into consideration the ratio laid down in the aforesaid decision in case of Rathod Jahabhai Dangarbhai & Ors. V/s. State of Gujarat and Ors. (supra), it can be seen that the settled legal position is that a successful candidate whose name is included in the select list does not acquire any indefeasible right to be appointed. That notification of vacancies is simply an invitation to qualified candidates to apply for recruitment and on being successful, get their name included in the select list but that does not give them any right to the post. Applying the aforesaid principles it is apparent that the petitioners have not been able to show any right existing in their favour which would necessitate granting of any relief as prayed for.

In light of this situation both these petitions are rejected. Rule discharged with no order as to costs.

(D.A. Mehta, J)
'Bhavesh'